

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/769,588	HOFFBECK, LOREN JOHN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ashwin Mehta	1638	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to papers filed 22 March 2004 and the telephone interview of May 15, 2006.
2.  The allowed claim(s) is/are 1-18.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4302004
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date attached.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

***Examiner's Amendment***

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lila Akrad on May 15, 2006.

The application has been amended as follows: In the specification,

On page 71, in line 3, the recitation, --and inbred parent plants GE568076 and GE760370-- was inserted after “35D28”.

On page 71, in line 5, the recitation, --, \_\_\_\_\_, and \_\_\_\_\_, respectively-- was inserted after “ATCC Deposit No. \_\_\_\_\_”.

On page 71, in line 13, the recitation, --and inbred parent plants GE568076 and GE760370-- was inserted after “hybrid maize 35D28”.

On page 71, in line 15, the recitation, --and inbred parent plants GE568076 and GE760370-- was inserted after “maize 35D28”.

**REQUIREMENT OF ALLOWANCE UNDER 37 CFR §§ 1.801-1.809**

2. The deposit statement on page 71 of the specification, as amended above, is deemed in accordance with 37 CFR §§ 1.801-1.809. Therefore, no 35 USC § 112, 1<sup>st</sup> paragraph rejection has been made even though it is apparent that seed of hybrid maize plant 35D28 and inbred parent plants GE568076 and GE760370 are essential to the claimed invention and that their

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deposits are necessary for an adequate written description and enablement for the claimed invention. Since the application is otherwise in condition for allowance except for the needed deposits, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR § 1.809(c)).

Under 37 CFR 1.809(c)-(d) an applicant is required to make a deposit of seed within three months after the mailing date of the Notice Of Allowance and Issue Fee Due. The time period for making a biological deposit, and an amendment to add the depository information to the specification and claims, is no longer extendable. See 37 CFR 1.136(c) and 1.809(c), revised in Changes to the Time Period for Making any Necessary Deposit of Biological Material, 66 Fed. Reg. 21090 (April 27, 2001), 1246 Off. Gaz. Pat. Office 104 (May 22, 2001), effective for Notices of Allowability mailed on or after May 29, 2001. Amendments are no longer permitted to be filed after the payment of the issue fee. See 37 CFR 1.312, revised in Changes to Application Examination and Provisional Application Practice, 71 Fed. Reg. 14871, 14869 and 14873 (March 20, 2000), 1233 Off. Gaz. Pat. Office 47, 50 and 54 (April 11, 2000), effective on May 29, 2000. Failure to make the needed deposits of seeds of hybrid maize plant 35D28 and inbred parent plants GE568076 and GE760370 will result in **ABANDONMENT** of the application for failure to prosecute. The deposit statement in the specification on page 71, the 2<sup>nd</sup> full paragraph of page 10, and all claims that refer to the instant seeds by name must be amended to include the deposit accession numbers. These amendments should be submitted before the

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payment of the issue fee as an Amendment After Allowance under 37 CFR 1.312. The statement of deposit in the specification shall contain:

- (1) The accession number for the deposit(s);
- (2) The date of the deposit(s);
- (3) A description of the deposited biological material sufficient to specifically identify and to permit examination; and
- (4) The name and address of the depository. (See 37 CFR 1.809(d))

3. The following is an examiner's statement of reasons for allowance: Applicant has developed a hybrid maize plant designated "35D28," by crossing two proprietary Pioneer Hi-Bred International inbred parent plants, designated "GE568076" and "GE760370." Several morphological and physiological characteristics of hybrid maize plant 35D28 are taught in Table 1 of the specification. U.S. Patent No. 6900378 teaches hybrid maize plant "34N43," which expresses several traits that are also expressed by 35D28. However, the prior art does not teach or fairly suggest any maize lines that have the combination of traits shown in instant Table 1. Regarding instant claims 2 and 10: when the claimed part of the plant is a seed, it is interpreted to mean the seed is that which produces the claimed plant.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Contact Information***

Any inquiry concerning this communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned, for sending official correspondence, is 571-273-8300. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

May 15, 2006



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Art Unit 1638